tion would seem to have no validity, however, if the amount of the judgment be limited to the benefit conferred. The result reached by the Indiana courts, therefore, seems adequate to safeguard the interests of both the general public and of the municipality and to furnish a logical application of the requirement of equivalent benefits in local assessments.

DISSOLUTION OF JUDICIAL LIENS UPON EXEMPT PROPERTY.—The exclusive power to determine what property of the bankrupt is exempt under the state laws is vested in the federal courts of bankruptcy.[1] In the exercise of this power the court's jurisdiction has often been regarded as limited to the determination of the validity of the claim to exemption, and to the segregation of the exempt property.[2] Nevertheless, there has been a distinct tendency to enlarge this jurisdiction along two lines. On the one hand, by an analogy to cases where the court decides whether the bankrupt has lost his right to an exemption by his fraud,[3] it is deemed permissible to inquire whether for any other reason the right cannot be exercised, and thereby to pass judgment upon conflicting liens and claims.[4] A similar exercise of jurisdiction, on the other hand, has been justified upon the ground that the administration of exempt property on behalf of those holding waivers of exemption entails no disposition of exempt property, since it is not really exempt as to such creditors.[5]

As a result of their varying exercise of jurisdiction over exempt property the lower federal courts are in conflict as to their ability to invoke the operation of § 67f[6] to dissolve, as preferences, all liens upon exempt property which were acquired within the four months' period.

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[1] § 2 (11) Bankruptcy Act. Lucius *v.* Cawthon-Coleman Co. (1905) 196 U. S. 149; McGahan *v.* Anderson (C. C. A. 1902) 113 Fed. 115. A state court cannot review the decision of a federal court as to what is an exemption. Woolfolk *v.* Murray (1871) 44 Ga. 133; Maxwell *v.* McCune (1872) 37 Tex. 515. If the bankrupt fails to claim, or is not entitled to any exemption, the property passes to the trustee with the rest of his estate. *In re* West (D. C. 1902) 116 Fed. 767; *In re* Stephens (D. C. 1902) 114 Fed. 192; *In re* Donahey (D. C. 1910) 176 Fed. 458; *cf. In re* Schuller (D. C. 1901) 108 Fed. 591. Under §§ 6a and 70a of the Bankruptcy Act, once property is set aside as exempt, all claims to it must be litigated in the state courts. *In re* Paramore & Ricks (D. C. 1907) 156 Fed. 211; *In re* Seydel (D. C. 1902) 118 Fed. 207; *In re* Little (D. C. 1901) 110 Fed. 621.

[2] *In re* Jackson (D. C. 1902) 116 Fed. 46; *In re* Culwell (D. C. 1908) 165 Fed. 828; see *In re* Strickland (D. C. 1909) 167 Fed. 867.

[3] *In re* Schafer (D. C. 1907) 151 Fed. 505; *In re* Ansley (D. C. 1907) 153 Fed. 983.

[4] *In re* Highfield (D. C. 1908) 163 Fed. 924; see *In re* Lucius (D. C. 1903) 124 Fed. 455. For a discussion of the forfeiture of the right to claim an exemption because of fraud, see 1 Columbia Law Rev. 399; Loveland, Bankruptcy § 424.

[5] *In re* Gordon (D. C. 1902) 115 Fed. 445; *In re* Boyd (D. C. 1903) 120 Fed. 999; *In re* Antigo Screen Door Co. (C. C. A. 1903) 123 Fed. 249.

[6] "That all levies, judgments, attachments, or other liens, obtained through legal proceedings against a person who is insolvent, at any time within four months prior to the filing of a petition in bankruptcy against him, shall be deemed null and void in case he is adjudged a bankrupt, and the property affected by the levy, judgment, attachment, or other lien shall be deemed wholly discharged. * * *"

One view declaring that exempt property passes to the trustee only for identification,[7] denies that such liens can be set aside as preferential, on the theory that the language of § 67f indicates that it applies only to such property as is transferred to the trustee for administration.[8] In further support of this conclusion it is urged that the sole purpose of this provision is to protect all the other creditors from a preferential transfer obtained by one creditor at the expense of the rest.[9] No other creditors suffer, however, since they cannot in any event reach the exempt property; and the setting aside of a preference acquired upon exempt property does not benefit them, for such property will not thereupon pass into the corpus of the estate to be distributed. The opposite view proceeds upon the ground that, since § 67e expressly excepts from its operation exempt property, the failure to include a similar exception in § 67f clearly indicates that its operation was not intended to be limited to property which passes into the bankrupt's estate for administration on behalf of the creditors.[10] This result rests upon the theory that the policy of § 67f is not only to secure strict equality among all the creditors, but also to protect the bankrupt by giving him a new start with his exempt property, free from all liens.[11] The latter view received the sanction of the Supreme Court in the novel case of *Chicago, Burlington & Quincy R. R.* v. *Hall* (1913) 33 Sup. Ct. Rep. 885. The bankrupt sought to obtain his wages, which were exempt under the laws of Nebraska where he resided, free from liens obtained within four months of the bankruptcy, by judicial proceedings in Iowa where such wages were not exempt. The court set aside the liens and ordered the employer of the bankrupt to pay him the wages.

Since, however, an exemption is a personal privilege of the bankrupt,[12] the policy which prohibits depriving him of his exempt property under judicial process without his consent, does not equally militate against his making a voluntary disposition of such property. Thus the Supreme Court in *Lockwood* v. *Exchange Bank*[13] declared that a lien acquired by contract or waiver upon exempt property was not invalid under § 67f. The distinction between these cases must be found in the policy of the Bankruptcy Act to protect the bankrupt, for the language of the Act does not suggest such a difference between voluntary and involuntary disposition of the property. The federal courts, moreover, have repeatedly held that they will aid the holder of a lien acquired after a voluntary waiver of exemptions, by staying the

[7]See Lockwood *v.* Exchange Bank (1903) 190 U. S. 294.

[8]*In re* Durham (D. C. 1900) 104 Fed. 231; *In re* Drigg (D. C. 1909) 171 Fed. 897. To the same effect, see Morris *v.* Covey (Ark. 1912) 148 S. W. 257; Robinson *v.* Wilson (1875) 15 Kan. 595.

[9]McKenny *v.* Cheney (1903) 118 Ga. 387; 1 Remington, Bankruptcy § 1100. The waiver of exemption in favor of some creditors cannot be taken advantage of by general creditors. *In re* Nye (C. C. A. 1904) 133 Fed. 33; *In re* Black (D. C. 1900) 104 Fed. 289.

[10]*In re* Tune (D. C. 1902) 115 Fed. 906.

[11]*In re* Forbes (C. C. A. 1911) 186 Fed. 79.

[12]Powers Dry Goods Co. *v.* Nelson (1901) 10 N. Dak. 580. Generally only the bankrupt may claim the benefit of an exemption. *In re* Sloan (D. C. 1905) 135 Fed. 873; *In re* Baughman (D. C. 1910) 183 Fed. 668; see *In re* Garner (D. C. 1902) 115 Fed. 200; *cf. In re* National Grocer Co. (C. C. A. 1910) 181 Fed. 33.

[13]See Note 7 *ante.*

bankrupt's discharge until the creditor can perfect his claim in the state courts, so that it will not be affected by the discharge.[14] To consistently observe the distinction indicated by the principal case the court must be prepared to refuse such relief to a creditor who is enforcing a lien obtained without the bankrupt's consent. A thorough protection of the bankrupt's exemption, it seems, would require the administration by the Bankruptcy Court of all the bankrupt's property whether subject to the claims of creditors or exempt.

CONTINGENT REMAINDERS AS ASSETS IN BANKRUPTCY.—The Bankruptcy Act provides that "all property which" the bankrupt "could by any means have transferred or which might have been levied upon and sold under judicial process against him" shall pass to his trustee in bankruptcy.[1] The first description practically includes the second,[2] so that transferability is the broad test of the trustee's title; and this, in turn, cannot be reduced to any uniform rule since it depends upon the law of the jurisdiction in which the property is located.[3]

At common law, because of their speculative and uncertain character contingent remainders were regarded, not as estates, but mere possibilities.[4] If the contingency were only as to the happening of an uncertain event, the remainderman was said to have a "possibility coupled with an interest," and he could grant and devise it freely.[5] But if the uncertainty were as to the persons who should ultimately take, as in a devise to the survivors of a class after a life tenancy, the right of each of those presumptively entitled was so shadowy that, like the interest of an heir apparent in the estate of his ancestor, it was considered inalienable.[6] This proposition was subject to the fol-

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[14] *In re* Hatch (D. C. 1900) 4 Am. Bankr. Rep. 349; see *In re* Wells (D. C. 1900) 5 Am. Bankr. Rep. 308; *In re* Brumbaugh (D. C. 1904) 128 Fed. 971; 15 Harvard Law Rev. 152; Lockwood *v.* Exchange Bank, *supra; In re* Lantzenheimer (1903) 124 Fed. 716; see Gregory Co. *v.* Cale (1911) 115 Minn. 508; Fowler, Foster & Co. *v.* Wood (1886) 26 S. Car. 169. A discharge in bankruptcy does not affect a prior mortgage lien upon exempt property. Long *v.* Bullard (1886) 117 U. S. 617.

[1] Bankruptcy Act § 70a (5); Remington, Bankruptcy § 963.

[2] DeHaas *v.* Bunn (1845) 2 Pa. 335; Nichols *v.* Guthrie (1902) 109 Tenn. 535; see Freeman, Executions § 178.

[3] *In re* Shenberger (D. C. 1900) 102 Fed. 978; Nichols *v.* Levy (1866) 5 Wall. 433, 444.

[4] Robertson *v.* Wilson (1859) 38 N. H. 48; 4 Kent, Comm. *260; 9 Columbia Law Rev. 546. Although the term contingent remainder is properly used only in connection with interests in real property, it is commonly applied to legal and equitable interests in real and personal property, and for the purposes of the present discussion there seems no need of distinction.

[5] 2 Washburn, Real Property (6th ed.) 527.

[6] Roundtree *v.* Roundtree (1886) 26 S. C. 450, *In re* Bank's Will (1898) 87 Md. 425, 443. The interest of an unascertained contingent remainderman, like that of an heir apparent, is sometimes termed a "bare possibility", but it is clearly distinguishable from the latter since it arises by express limitation. See note 33 L. R. A. 266, 267.

In Maine and Massachusetts, "When a contingent remainder, executory devise, or estate in expectancy is so limited to a person that it will, in